

Message Text

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INFO AMEMBASSY BONN IMMEDIATE

AMEMBASSY BERLIN

AMEMBASSY LONDON

AMEMBASSY MOSCOW

AMEMBASSY PARIS

USMISSION NATO

USMISSION USUN

C O N F I D E N T I A L USBERLIN 187

E.O. 11652: GDS

TAGS: PGOV, PFOR, CONS, WB, GW, GE

SUBJECT: CONSULAR AGREEMENTS WITH GDR AND FRG--

GERMAN NATIONALITY QUESTION

REF: STATE 21037

. FROM OUR PERSPECTIVE DEPARTMENT'S APPROACH TO
"NATIONALITY" PROBLEMS (REFTEL) APPEARS PRACTICAL AND
RESPONSIVE TO FRG NEED TO BE ABLE TO DEMONSTRATE A
CONTINUED ABILITY TO PROVIDE CONSULAR REPRESENTATION FOR
ALL GERMANS WITHIN MEANING OF FRG BASIC LAW, INCLUDING
THOSE WHO WOULD BE CONSIDERED GDR CITIZENS UNDER GDR
LAW BUT WHO DESIRE HELP FROM FRG. BLURRING OF CONCEPTS
OF CITIZENSHIP AND NATIONALITY IN PRESENT FRG STATEMENTS
AND POSITIONS VIS A VIS STATES SEEKING CONSULAR AGREE-
MENTS WITH GDR, HOWEVER, COMES FROM COMBINATION OF
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COMPLEXITIES OF GERMAN LANGUAGE (IN WHICH STAATS-

ANGEHOERIGEIT CAN MEAN EITHER CITIZENSHIP OR NATIONALITY) AND POLITICAL-LEGAL MYSTICISM ON CONTINUING EXISTENCE OF A GERMANY OF WHICH BOTH FRG AND GDR ARE MEMBERS WITH RESULTING SPECIAL RELATIONSHIP TO EACH OTHER. BY SPEAKING OF "FRG NATIONALITY" OR "NATIONAL OF OF FRG" AS DEPARTMENT IS CONSIDERING DOING EITHER IN RESPONSE TO FRG DEMARCHE OR IN FURTHER EXCHANGE OF NOTES WITH FRG, WE MIGHT INADVERTENTLY CONTRIBUTE TO DIFFICULTIES WHICH FRG IS PRESENTLY FACING IN MAKING ITS POLITICAL-LEGAL THEOLOGY CORRESPOND WITH POLITICAL REALITIES. THIS IN TURN WOULD CONTRIBUTE TO NERVOUSNESS EXPRESSED RECENTLY BY BERLIN POLITICIANS AND MEDIA THAT IF SEPARATE FRG AND GDR NATIONALITIES ARE ACCEPTED, THIRD GERMAN NATIONALITY --FOR WEST BERLINERS-- WOULD INEVITABLY FOLLOW.

2. WE WOULD SUGGEST, THEREFORE, THAT DEPARTMENT MAY WISH TO CONSIDER OFFERING FRG CLARIFICATION WHICH WOULD SAY THAT US-FRG AGREEMENTS, MOST PARTICULARLY 1954 FCN, REPRESENT AGREEMENTS BETWEEN US ANF FRG RESPECTING SUCH GERMAN NATIONALS WITHIN MEANING OF FRG BASIC LAW WHO FALL UNDER JURISDICTION OF FRG, INCLUDING SUCH GERMAN NATIONALS WHO MAY ALSO FALL WITHIN JURISDICTION OF GDR BUT WHO SEEK PROTECTION FROM FRG. SUCH FORMULATION WOULD OBVIATE NEED FOR ACCEPTANCE FO CONCEPT OF FRG NATIONALITY. IF THIS FORMULATION IS TOO VAGUE, IT MIGHT BE POSSIBLE TO SPEAK OF GERMAN NATIONALS INCLUDING THOSE WHO ARE GDR CITIZENS BUT WHO WISH TO SEEK PROTECTION FROM FRG. WE NOTE IN SUPPORT OF LATTER POSSIBILITY THAT FRG IS WILLING IN MULTILATERAL NEGOTIATIONS SUCH AS CSCE TO ACCEPT FORMULATIONS WHICH SUGGEST THAT FRG AND GDR OWE CERTAIN OBLIGATIONS TO THEIR "CITIZENS", WHILE OBJECTING TO USE OF ENGLISH WORD "NATIONALS", GDR ALSO IS APPARENTLY WILLING (BERLIN 5091) TO ACCEPT THAT INDIVIDUAL IS BOTH GDR CITIZEN AND GERMAN NATIONAL.

3. FORMULATION WHICH AVOIDS USE OF TERM "FRG NATIONALITY" OF "NATIONAL OF FRG" WOULD ALSO EASE BERLINERS' CONCERNS SINCE, PURSUANT TO ALLIED DECLARATION ON BERLIN OF MAY 1955, BERLIN IS ENTITLED TO ADOPT SAME "NATIONALITY" LAWS AS FRG WITHOUT QUESTION BEING ADDRESSED AS TO CONFIDENTIAL

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WHETHER BERLINERS CAN BE FRG NATIONALS OR CITIZENS WHEN BERLIN IS NEITHER CONSTITUENT PART OF FRG NOR GOVERNED BY IT. WE WOULD THEN BE WELL POSITIONED TO REBUT SOVIET AND GDR CLAIMS THAT DISTINCT WEST BERLIN NATIONALITY SHOULD BE RECOGNIZED. IN ADDITION TO RELYING ON MAY 1955 DECLARATION, WE COULD POINT OUT THAT (A) WHILE WE ACCEPT LOGIC THAT STATE WHICH WE RECOGNIZE MUST BE CONSIDERED TO HAVE CITIZENS, BERLIN IS NOT STATE AND

IT IS THEREFORE NOT APPROPRIATE TO CONSIDER THERE IS
BERLIN CITIZENSHIP; (B) BOTH FRG AND GDR AGREE THAT
THERE IS COMMON GERMAN NATIONALITY IN WHICH BERLINERS
OBVIOUSLY SHARE; AND (C) PURSUANT TO MAY 1955 DECLARATION
AND IN ACCORDANCE WITH SITUATION RECOGNIZED IN QUADRI-
PARTITE AGREEMENT, IT IS PROPER FOR WEST BERLIN TO
ADOPT SAME NATIONALITY LAWS AS FRG.GEORGE

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